

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MARCUS D. JONES,)	
)	
Petitioner-Defendant,)	
)	
vs.)	No. 02-0775-CV-W-SOW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent-Plaintiff.)	

ORDER

Before the Court are petitioner Marcus D. Jones's Motion to Correct (Doc. # 22) and Motion for His Presence at Sentencing Pursuant to Federal Rule of Criminal Procedure 43(a)(3) (Doc. # 23).

This § 2255 case is on remand from the Eighth Circuit. The Eighth Circuit has instructed the Court "to vacate one of [Jones's] felon-in-possession convictions and refund any associated assessment fees that may have been paid." U.S. v. Jones, 403 F.3d 604, 607 (8th Cir. 2005). Consistent with the mandate of the Eighth Circuit, the Court will vacate one of Jones's felon-in-possession convictions. Regarding the special assessment, the docket sheet for Jones's criminal case does not indicate that Jones has paid any portion of the \$300.00 special assessment. Accordingly, Jones is not entitled to a refund.

The final sentence of the Eighth Circuit's opinion permits Jones to "seek further relief in the district court if he wishes." Id. Seizing on this language, Jones's Motion to Correct seeks additional relief in the Court. Consistent with the mandate of the Eighth Circuit, the Court will permit Jones to assert additional claims for relief that have not yet been raised in his prior § 2255 motion. The government is instructed to respond only to those claims in Jones's Motion to Correct that may be raised in a § 2255 proceeding and have not yet been raised in Jones's prior § 2255 motion. The

government will have until September 1, 2005, to file its opposition.

Accordingly, it is hereby

ORDERED that pursuant to the mandate of the Eighth Circuit, Jones's conviction on Count III of the Indictment charging him with being a felon in possession is vacated. Jones's special assessment is reduced to \$200.00. All other components of Jones's sentence as set forth in the Judgment are unchanged. It is further

ORDERED that Jones's Motion to Correct (Doc. # 22) remains pending before the Court. The government shall file an opposition to Jones's Motion to Correct addressing only those claims that may be raised in a § 2255 proceeding and have not been raised in Jones's prior § 2255 motion. The government's opposition brief shall be filed on or before September 1, 2005. It is further

ORDERED that Jones's Motion for His Presence at Sentencing Pursuant to Federal Rule of Criminal Procedure 43(a)(3) (Doc. # 23) is denied.

/s/Scott O. Wright
SCOTT O. WRIGHT
Senior United States District Judge

Dated: 8-4-05